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09/408,634	09/30/1999	MARK WISNIEWSKI	AVERP2514USA	4276

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EXAMINER

HYLTON, ROBIN ANNETTE

ART UNIT

PAPER NUMBER

3727

DATE MAILED: 04/23/2003

23

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/408,634

Applicant(s)

WISNIEWSKI ET AL.

Examiner

Robin Hylton

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 21 January 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-17 and 20-39 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 and 20-39 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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## DETAILED ACTION

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on January 21, 2003 has been entered.

### ***Claim Rejections - 35 USC § 112***

2. Claims 1-17,20-23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, the claims are rejected for the following reasons:

The structure of the closure is not clearly set forth in the independent claims since only one of the upper or lower surface can possibly contact the container. The phrase "at least one non-bondable ...are not attached to the article" appears to imply both surfaces contact the container when applied.

The structure of claim 17 is unclear because of the awkward phraseology.

As a result of using "sealing means", claim 20 fails to meet the 3-prong analysis of a "means plus function" claim set forth in the "Supplemental Examination Guidelines" effective June 21, 2000 and published in the Official Gazette on July 25, 2000. If applicant desires to invoke 35 USC 112, 6<sup>th</sup> paragraph, applicant must either modify the claim to include the phrase "means for" or show that even though the phrase "means for" is not used, the claim limitation is written as a function to be performed and does not recite sufficient structure, material, or acts which would preclude application of 35 USC 112, 6<sup>th</sup> paragraph.

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Dependent claims not specifically mentioned are rejected as depending from rejected base claims since they inherently contain the same deficiencies therein.

***Claim Rejections - 35 USC § 102***

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4. Claims 24,26, and 28 are rejected under 35 U.S.C. 102(b) as being anticipated by Freedman (US 4,925,714).

The laminate structure of Freedman is closure anticipating the claims.

***Claim Rejections - 35 USC § 103***

5. Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Freedman in view of Davis et al. (US 5,637,366).

Freedman teaches the claimed closure except for the films being uniaxially oriented.

Davis teaches it is known to uniaxially or biaxially orient films of laminate structure.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of a uniaxially orientation to the closure of Freedman. Doing so is an obvious matter of design choice known in the art.

6. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Freedman.

Freedman teaches the claimed closure except for the bondable material being at least one heat seal material.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a heat seal bonding material since the examiner takes Official Notice of the equivalence of pressure sensitive adhesive material and heat seal material for their use in the closure art and the selection of any of these known equivalents to secure a closure to a container would be within the level of ordinary skill in the art.

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7. Claims 1,3-14,23,29,31,32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Freedman in view of Hatano et al. (US 4,915,289).

Freedman teaches the claimed closure except for bondable and non-bondable areas on the first and second layers of the closure.

Hatano teaches a closure having bondable and non-bondable areas on the upper and/or lower surface of the closure.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of bondable and non-bondable areas on the layers of the closure of Freedman. Doing so saves material and provides a more easily openable closure.

Regarding claims 9,14, and 32, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a heat seal bonding material since the examiner takes Official Notice of the equivalence of pressure sensitive adhesive material and heat seal material for their use in the closure art and the selection of any of these known equivalents to secure a closure to a container would be within the level of ordinary skill in the art.

Freedman discloses a range for the peel strength at the separation interface of less than 50 Newtons/meter. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the peel strength in the range of 30 to 40 grams per 1-inch or 2-inch width at 90° peel, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art.

Freedman is silent regarding specific polymeric film material. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use any of the known polymeric materials for the film layers, since it has been held to be within the general skill

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of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

8. Claims 2 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claims 1 and 29, respectively, above, and further in view of Davis.

Freedman as modified teaches the claimed closure except for the films being uniaxially oriented.

Davis teaches it is known to uniaxially or biaxially orient films of laminate structure.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of a uniaxially orientation to the modified closure of Freedman. Doing so is an obvious matter of design choice known in the art.

9. Claims 15-17,20-22,33,35-39 rejected under 35 U.S.C. 103(a) as being unpatentable over Greer et al. (US 6,032,8540 in view of Freedman and Hatano.

Greer teaches a container (i.e., an envelope) having a flap and a closure. Greer is silent regarding a directionally peelable closure as set forth in the claims.

Freedman teaches it is known to provide a directionally peelable closure of laminate layers.

Hatano teaches it is known to provide a closure having bondable and non-bondable areas on the upper and/or lower surface of the closure.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of a directionally peelable closure of laminate layers and to apply bondable and non-bondable areas to upper and lower surfaces of the closure. Doing so provides a more easily removable closure.

Regarding claims 36 and 39, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a heat seal bonding material since the

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examiner takes Official Notice of the equivalence of pressure sensitive adhesive material and heat seal material for their use in the closure art and the selection of any of these known equivalents to secure a closure to a container would be within the level of ordinary skill in the art.

10. Claim 34 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 33 above, and further in view of Davis.

Greer as modified teaches the claimed closure except for the films being uniaxially oriented.

Davis teaches it is known to uniaxially or biaxially orient films of laminate structure.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of a uniaxially orientation to the modified closure of Freedman.

Doing so is an obvious matter of design choice known in the art.

### ***Response to Arguments***

11. Applicant's arguments with respect to claims 1-17,20-22 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

13. In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (703) 872-9302 or (703) 872-9303 for after final amendments. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner.

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14. It is called to applicant's attention that if a communication is faxed before the reply time has expired, applicant may submit the reply with a "Certificate of Facsimile" which merely asserts that the reply is being faxed on a given date. So faxed, before the period for reply has expired, the reply may be considered timely. A suggested format for a certificate follows:

I hereby certify that this correspondence for Application Serial No. \_\_\_\_\_ is being facsimiled to The U.S. Patent and Trademark Office via fax number (703) 305-3579 on the date shown below:

Typed or printed name of person signing this certificate  
\_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_

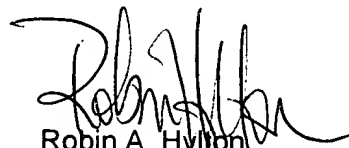
15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (703) 308-1208. The examiner works a flexible schedule, but can normally be reached on Monday - Friday from 9:00 a.m. to 4:00 p.m. (Eastern time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young, can be reached on (703) 308-2572.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to Errica Bembry at (703) 306-4005.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1148.

RAH  
April 19, 2003

  
Robin A. Hylton  
Primary Examiner  
GAU 3727